



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

July 14, 2003

S. 877 **Controlling the Assault of Non-Solicited Pornography** **and Marketing Act of 2003**

*As ordered reported by the Senate Committee on Commerce, Science, and Transportation
on June 19, 2003*

SUMMARY

S. 877 would impose new restrictions on the transmission of unsolicited commercial electronic mail (UCE), often referred to as “spam.” The bill would require all senders of UCE to identify the messages as UCE, provide accurate header information, include a functioning return email address, and stop sending messages to recipients who opt not to receive them. In addition, the bill would create criminal penalties for knowingly sending UCE that contains false information in the email’s header line.

The provisions of S. 877 would be enforced primarily by the Federal Trade Commission (FTC) under the authorities provided in the Federal Trade Commission Act, which includes assessments of civil penalties for violations of the act. However, agencies such as the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), the National Credit Union Administration (NCUA), the Securities and Exchange Commission (SEC), and the Secretary of Transportation would enforce the bill as it applies to businesses within the agencies’ respective jurisdictions. Those agencies would punish violations of the bill’s provisions with civil and criminal penalties.

CBO estimates that implementing S. 877 would cost about \$1 million in 2004 and about \$2 million a year in 2005 and thereafter, assuming appropriation of the necessary amounts. CBO estimates that civil penalties collected as a result of enacting this bill would increase governmental receipts (revenues) by about \$3 million a year when fully implemented (by 2005). The bill also would have additional effects on revenues and direct spending by imposing costs on banking regulators and by creating new criminal penalties. However, CBO estimates that those additional effects would be negligible.

S. 877 would preempt certain state or local laws that regulate the use of electronic mail to send commercial messages. Such a preemption is a mandate as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the budgetary impact of the mandate would be minimal and would not exceed the threshold established in UMRA (\$59 million in 2003, adjusted for inflation).

S. 877 would impose private-sector mandates as defined in UMRA by requiring that senders of commercial electronic mail include certain information within their messages. Based on information provided by government and industry sources, CBO expects that the direct costs of complying with those mandates would fall below the annual threshold established by UMRA (\$117 million in 2003, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of S. 877 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By Fiscal Year, in Millions of Dollars				
	2004	2005	2006	2007	2008
CHANGES IN FTC SPENDING SUBJECT TO APPROPRIATION ^a					
Estimated Authorization Level ^b	1	2	2	2	2
Estimated Outlays	1	2	2	2	2
CHANGES IN REVENUES					
Estimated Revenues	1	3	3	3	3

a. S. 877 also would increase direct spending by less than \$500,000 a year.

b. The FTC received a gross 2003 appropriation of \$177 million. This amount will be offset by an estimated \$95 million in fees the FTC collects for merger reviews and administering a national “do-not-call” registry.

BASIS OF ESTIMATE

S. 877 would require the FTC to enforce the provisions of the bill under the Federal Trade Commission Act. Based on information from the FTC, CBO expects that the agency would

need to upgrade its database of UCE complaints, hire additional staff to investigate possible violations, and assist companies attempting to comply with the bill's provisions. CBO estimates that those activities would cost \$1 million in 2004 and \$2 million a year in subsequent years, assuming appropriation of the necessary amounts.

S. 877 would create a variety of new civil and criminal penalties, which are classified in the budget as governmental receipts (revenues). The FTC would enforce the bill with civil penalties using its authority under the Federal Trade Commission Act. Based on information from the FTC, CBO estimates that those enforcement efforts would cause revenues to rise by \$3 million a year under the bill. The bill also would create new criminal penalties and authorize other agencies, including the SEC and the Department of Transportation, to enforce the bill's provisions on industries within their jurisdictions using both civil and criminal penalties. However, CBO estimates that the effect of those additional provisions on revenues would not be significant in any year.

Collections of criminal fines are deposited in the Crime Victims Fund and spent in subsequent years. Because any increase in direct spending would equal the amount of fines collected (with a lag of one year or more), the additional direct spending also would be negligible.

The OCC, NCUA, OTS, FDIC, and the Board of Governors of the Federal Reserve System would enforce the provisions of S. 877 as they apply to financial institutions. The OCC, NCUA, and OTS charge fees to the institutions they regulate to cover all of their administrative costs; therefore, any additional spending by these agencies to implement the bill would have no net budgetary effect. That is not the case with the FDIC, however, which uses insurance premiums paid by all banks to cover the expenses it incurs to supervise state-chartered banks. The bill's requirement that the FDIC enforce the bill's restrictions on UCE sent by these banks would cause a small increase in FDIC spending but would not affect its premium income. In total, CBO estimates that S. 877 would increase net direct spending of the OCC, NCUA, OTS, and FDIC by less than \$500,000 a year.

Budgetary effects on the Federal Reserve are recorded as changes in revenues (governmental receipts). Based on information from the Federal Reserve, CBO estimates that enacting S. 877 would reduce such revenues by less than \$500,000 a year.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

S. 877 would establish new federal prohibitions on certain types of commercial electronic mail. While the Federal Trade Commission and other federal agencies would generally

enforce these prohibitions, in the case of any person engaged in providing insurance, the prohibitions would be enforced under state insurance laws. However, any such state enforcement would be voluntary.

S. 877 would preempt certain state or local laws that regulate the use of electronic mail to send commercial messages. Such a preemption is a mandate under UMRA. CBO estimates that the mandate would have little budgetary impact on state and local governments and would not, therefore, exceed the threshold established in UMRA (\$59 million in 2003, adjusted for inflation).

ESTIMATED IMPACT ON THE PRIVATE SECTOR

S. 877 would impose private-sector mandates as defined in the UMRA by requiring that senders of commercial electronic mail include certain information within their messages. The bill would require that all senders of commercial electronic mail include a valid return electronic-mail address and an accurate subject heading within their message. Senders of unsolicited commercial electronic mail would further be required to include a valid physical postal address and to identify their messages as UCE within their messages. The bill would require that the electronic-mail address of the UCE sender must remain functioning for at least 30 days after transmission of UCE.

In addition, S. 877 would require persons who send UCE to provide the recipients of their messages with an option to discontinue receiving UCE from the sender and to notify recipients of that option to discontinue in each UCE message. If a recipient makes a request to a sender not to receive some or any UCE messages from such sender, then the sender, or anyone acting on the sender's behalf, would be prohibited from initiating the transmission to the recipient starting 10 business days after the receipt of such request. Based on information from government and industry sources, CBO estimates that the direct costs of complying with the mandates contained in the bill would fall below the annual threshold established by UMRA for private-sector mandates (\$117 million in 2003, adjusted annually for inflation).

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